

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 BENJAMIN SHUPP,

11 Plaintiff,

12 v.

13 WALMART INC., JOHN DOES 1-10

14 Defendants

Civil Action No. 18-01521 BJR

**STIPULATED
PROTECTIVE ORDER**

15
16 1. PURPOSES AND LIMITATIONS

17 Discovery in this action is likely to involve production of confidential, proprietary, or private
18 information for which special protection may be warranted. Accordingly, the parties hereby stipulate
19 to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge
20 that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all
21 disclosures or responses to discovery, the protection it affords from public disclosure and use
22 extends only to the limited information or items that are entitled to confidential treatment under the
23 applicable legal principles, and it does not presumptively entitle parties to file confidential
24 information under seal.
25

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things produced
3 or otherwise exchanged: Wal-Mart's personnel training materials.

4 3. SCOPE

5 The protections conferred by this agreement cover not only confidential material (as defined
6 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
7 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations,
8 or presentations by parties or their counsel that might reveal confidential material.

9 However, the protections conferred by this agreement do not cover information that is in the
10 public domain or becomes part of the public domain through trial or otherwise.

11 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

12 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
13 produced by another party or by a non-party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
15 categories of persons and under the conditions described in this agreement. Confidential material
16 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
17 that access is limited to the persons authorized under this agreement.

18 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
19 the court or permitted in writing by the designating party, a receiving party may disclose any
20 confidential material only to:

21 (a) the receiving party's counsel of record in this action, as well as employees of
22 counsel to whom it is reasonably necessary to disclose the information for this litigation;

23 (b) the officers, directors, and employees (including in house counsel) of the
24 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree
25 that a particular document or material produced is for Attorney's Eyes Only and is so designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court, court personnel, and court reporters and their staff;

4 (e) copy or imaging services retained by counsel to assist in the duplication of
5 confidential material, provided that counsel for the party retaining the copy or imaging service
6 instructs the service not to disclose any confidential material to third parties and to immediately
7 return all originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
10 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal confidential material must be
12 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
13 this agreement;

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 4.3 Filing Confidential Material. Before filing confidential material or discussing or
17 referencing such material in court filings, the filing party shall confer with the designating party, in
18 accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
19 remove the confidential designation, whether the document can be redacted, or whether a motion to
20 seal or stipulation and proposed order is warranted. During the meet and confer process, the
21 designating party must identify the basis for sealing the specific confidential information at issue,
22 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
23 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
24 the standards that will be applied when a party seeks permission from the court to file material under
25 seal. A party who seeks to maintain the confidentiality of its information must satisfy the

requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential

1 material. If only a portion or portions of the material on a page qualifies for protection, the producing
2 party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
3 margins).

4 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
5 any participating non-parties must identify on the record, during the deposition or other pretrial
6 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
7 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
8 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
9 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at
10 trial, the issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a prominent place on
12 the exterior of the container or containers in which the information or item is stored the word
13 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the
14 producing party, to the extent practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the designating party's right
17 to secure protection under this agreement for such material. Upon timely correction of a designation,
18 the receiving party must make reasonable efforts to ensure that the material is treated in accordance
19 with the provisions of this agreement.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
22 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
24 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a
25

1 confidentiality designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding confidential
5 designations or for a protective order must include a certification, in the motion or in a declaration or
6 affidavit, that the movant has engaged in a good faith meet and confer conference with other affected
7 parties in an effort to resolve the dispute without court action. The certification must list the date,
8 manner, and participants to the conference. A good faith effort to confer requires a face-to-face
9 meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention, the designating party may file and serve a motion to retain confidentiality under Local
12 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion
13 in any such motion shall be on the designating party. Frivolous challenges, and those made for an
14 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
15 expose the challenging party to sanctions. All parties shall continue to maintain the material in
16 question as confidential until the court rules on the challenge.

17 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
18 LITIGATION

19 If a party is served with a subpoena or a court order issued in other litigation that compels
20 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
21 must:

22 (a) promptly notify the designating party in writing and include a copy of the
23 subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to issue
25 in the other litigation that some or all of the material covered by the subpoena or order is subject to

1 this agreement. Such notification shall include a copy of this agreement; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued by
3 the designating party whose confidential material may be affected.

4 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
6 material to any person or in any circumstance not authorized under this agreement, the receiving
7 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
8 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
9 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
10 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
11 Bound" that is attached hereto as Exhibit A.

12 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
13 MATERIAL

14 When a producing party gives notice to receiving parties that certain inadvertently produced
15 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
16 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
17 modify whatever procedure may be established in an e-discovery order or agreement that provides
18 for production without prior privilege review. The parties agree to the entry of a non-waiver order
19 under Fed. R. Evid. 502(d) as set forth herein.

20 10. NON TERMINATION AND RETURN OF DOCUMENTS

21 Within 60 days after the termination of this action, including all appeals, each receiving party
22 must return all confidential material to the producing party, including all copies, extracts and
23 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

24 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
25 documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition

1 and trial exhibits, expert reports, attorney work product, and consultant and expert work product,
2 even if such materials contain confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a
4 designating party agrees otherwise in writing or a court orders otherwise.

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: January 16, 2019

7 Wood, Smith, Henning & Berman LLP

RUSSELL & HILL

8 s/Colin J. Troy

s/Dean F. Swanson

9 Colin J. Troy, WSBA #46197
10 ctroy@wshblaw.com

Dean F. Swanson, WSBA #40638

11 WOOD, SMITH, HENNING &
12 BERMAN LLP

dean@russellandhill.com

13 520 Pike Street, Suite 1525
14 Seattle, Washington 98101-4001

RUSSELL & HILL

15 Phone 206-204-6800

3811 A Broadway

16 Fax 206-299-0400

Everett, WA 98201-5031

17 Attorney for Defendant

Phone: (425) 212-9165

Attorney for Plaintiff

18 PURSUANT TO STIPULATION, IT IS SO ORDERED

19 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
20 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
21 in any other court, constitute a waiver by the producing party of any privilege applicable to those
22 documents, including the attorney-client privilege, attorney work-product protection, or any other
23 privilege or protection recognized by law.
24
25

DATED: January 28, 2019

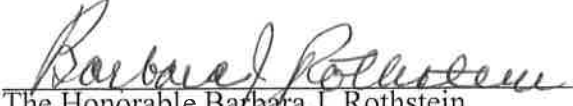

The Honorable Barbara J. Rothstein
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued
by the United States District Court for the Western District of Washington on [date] in the case of
_____[insert formal name of the case and the number and initials assigned to it
by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western
District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order,
even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

LEGAL:10366-0131/10671405.1